



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2014-0700; FRL-9919-12-Region 6]

Approval and Promulgation of Implementation Plans; Arkansas; Revisions for the Regulation and Permitting of Fine Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of three revisions to the Arkansas State Implementation Plan (SIP) submitted by the Arkansas Department of Environmental Quality on July 26, 2010; November 6, 2012; and September 10, 2014. Together, these three submittals update the Arkansas SIP such that the ADEQ has the authority to implement the current National Ambient Air Quality Standards (NAAQS) and regulate and permit emissions of fine particulate matter (particulate matter with diameters less than or equal to 2.5 micrometers (PM_{2.5})) and its precursors through the Arkansas PSD program. The September 10, 2014, submittal is a request for parallel processing of revisions proposed by the ADEQ on August 22, 2014. The EPA is proposing to find that the Arkansas Prevention of Significant Deterioration (PSD) New Source Review (NSR) SIP meets all Clean Air Act (CAA or the Act) requirements for PM_{2.5} PSD. EPA is also proposing to approve a portion of the December 17, 2007 SIP submittal for the PM_{2.5} NAAQS pertaining to interstate transport of air pollution and PSD. EPA is proposing these actions under section 110 and part C of the CAA.

DATES: Comments must be received on or before **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R06-OAR-2014-0700, by one of the following methods:

- *www.regulations.gov*. Follow the online instructions for submitting comments.
- E-mail: Ms. Adina Wiley at *wiley.adina@epa.gov*.
- Mail or Delivery: Ms. Adina Wiley, Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2014-0700. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* website is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you

include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Wiley (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-2115. Ms. Wiley can also be reached via electronic mail at wiley.adina@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

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I. Background for Our Proposed Action

A. *General Information on SIPs*

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that air quality meets the National Ambient Air Quality Standards (NAAQS) established by the EPA. The NAAQS are established under section 109 of the CAA and currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. A SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that air quality in the state meets the NAAQS. It is required by section 110 and other provisions of the CAA. A SIP protects air quality primarily by addressing air pollution at its point of origin. SIPs can be extensive, containing state regulations or other enforceable documents, and supporting information such as emissions inventories, monitoring networks, and modeling

demonstrations. Each state must submit regulations and control strategies to the EPA for approval and incorporation into the federally-enforceable SIP.

B. Preconstruction Review and Permitting Programs

The Act at section 110(a)(2)(C) requires SIPs to include preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants. These requirements apply in attainment and nonattainment areas and cover both major and minor new sources and modifications. Collectively, these SIP requirements are referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: prevention of significant deterioration (PSD), nonattainment new source review (NNSR), and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the NAAQS – “attainment areas” – as well as areas where there is insufficient information to determine if the area meets the NAAQS – “unclassifiable areas.” The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are designated as “nonattainment areas” because they are not in attainment of the NAAQS. The Minor NSR SIP program addresses construction or modification activities for sources that will not emit, or have the potential to emit, above certain thresholds and thus do not qualify as “major.” Minor NSR applies regardless of the designation of the area in which a source is located. EPA regulations governing the criteria that states must satisfy for EPA approval of the NSR programs as part of the SIP are contained in 40 CFR sections 51.160 - 51.166.

C. Summary of State Submittals

The ADEQ submitted a collection of revisions to the Arkansas SIP on July 26, 2010; November 6, 2012; and September 10, 2014. Together, these revisions update the Arkansas SIP

to implement the requirements of the 1997 and 2006 PM_{2.5} NAAQS, regulate emissions of PM_{2.5} and its precursors through the Arkansas PSD program, and make general updates throughout the entirety of the Arkansas SIP to address grammar, formatting, and updates to incorporation by reference dates. Additionally, on December 17, 2007, Arkansas submitted a letter certifying that its SIP addressed the CAA requirements for interstate transport of air pollution (CAA 110(a)(2)(D)(i)) for the 1997 PM_{2.5} NAAQS. These SIP submittals are available in the electronic docket found in the *www.regulations.gov* website (Docket number EPA-R06-OAR-2014-0700).

1. The July 26, 2010 Submittal

On December 5, 2008, the Arkansas Pollution Control and Ecology Commission (APC&EC) adopted revisions to the Regulation 19 – Regulations of the Arkansas Plan of Implementation for Air Pollution Control. Governor Beebe submitted these regulations as a revision to the Arkansas SIP in a letter dated July 26, 2010. On November 23, 2010, Teresa Marks, Director of Arkansas Department of Environmental Quality (ADEQ), provided a clarification letter regarding the July 26, 2010 submittal. This clarification letter was a resubmission of the SIP revision resulting from the previous submittal containing one incorrect hardcopy and electronic copy of the SIP revision. As part of this action, the EPA is addressing the following revisions contained in the July 26, 2010 submittal that were adopted on December 5, 2008, effective January 25, 2009:

- Non-substantive revisions to Regulation 19, Chapter 1 to correct formatting, clarify the incorporation by reference dates, and clarify acronyms.
- Substantive revisions to Regulation 19, Chapter 2 to add new definition for “PM_{2.5}” and “Title I modification” and to revise the definition of “Volatile organic compounds”. Non-

substantive revisions to correct formatting, clarify the incorporation by reference dates, and clarify acronyms.

- Non-substantive revisions to Regulation 19, Chapter 3 to correct formatting.
- Non-substantive revisions to Regulation 19, Chapter 5 to correct formatting and clarify acronyms.
- Non-substantive revisions to Regulation 19, Chapter 6 to correct formatting and clarify acronyms.
- Non-substantive revisions to Regulation 19, Chapter 7 to clarify incorporation by reference dates.
- Non-substantive revisions to Regulation 19, Chapter 10 to correct formatting and clarify acronyms.
- Non-substantive revisions to Regulation 19, Chapter 11 to correct formatting.
- Non-substantive revisions to Regulation 19, Chapter 13 to correct formatting and clarify acronyms.

2. The November 6, 2012 Submittal

On June 22, 2012, the APC&EC adopted revisions to Regulation 9 – Permit Fee Regulations, Regulation 19 – Regulations of the Arkansas Plan of Implementation for Air Pollution Control, and Regulation 26 – Regulations of the Arkansas Operating Air Permit Program. On October 26, 2012, APC&EC adopted additional revisions to Regulation 19. Governor Beebe submitted these regulations as a revision to the Arkansas SIP in a letter dated November 6, 2012. As part of this action, the EPA is addressing the following revisions contained in the November 6, 2012 submittal that were adopted on June 22, 2012, and October

26, 2012, effective July 9, 2012, and November 18, 2012, respectively:

- Substantive revision to Regulation 19, Chapter 1 to address greenhouse gases (GHGs).
- Substantive revisions to Regulation 19, Chapter 2 to add new definition for “CO₂ equivalent emissions” and revise the definition of “Federally regulated pollutant”.

3. The September 10, 2014 Submittal

On September 10, 2014, Teresa Marks, Director of the ADEQ, submitted a request for parallel processing of proposed AR SIP revisions to Regulation 19 – Regulations of the Arkansas Plan of Implementation for Air Pollution Control. As part of this action, the EPA is addressing the following revisions contained in the September 10, 2014, request for parallel processing:

- Substantive revisions to Regulation 19, Chapter 2 to add a new definition for “PM_{2.5} emissions” and to revise existing definitions for “NAAQS,” “particulate matter emissions,” “PM_{2.5},” and “VOC” as well as other non-substantive revisions throughout the Definitions to correct formatting and grammar.
- Substantive revisions to Regulation 19, Chapter 5 to specify that no person shall cause or permit the construction or modification of equipment which would cause or allow any ambient air increment in the PSD program to be exceeded.
- Substantive revisions to Regulation 19, Chapter 9 to provide for the authority to regulate PM_{2.5} and its precursors through the Arkansas PSD program.
- New Regulation 19, Appendix B to provide the National Ambient Air Quality Standards List.

4. What is the EPA Not Addressing?

States have the obligation to adopt and submit regulations for the EPA's review and approval into the federally enforceable SIP. The EPA has an obligation under the CAA to address each submittal from the state. However, we are not obligated to address all portions of a submittal at once. Where the EPA determines that a provision is independent of another, we have the discretion to address the submitted provisions separately. Accordingly, the EPA is taking no action at this time on the following revisions submitted by the ADEQ. As indicated below, we have determined that each of the submitted provisions is separate from the PSD program and not necessary for PSD implementation.

- The EPA is taking no action at this time on the Substantive revisions to Regulation 19, Chapter 4 to revise the Minor NSR permitting thresholds that were submitted on July 26, 2010. The action we are taking today will substantively revise the Arkansas PSD program to provide for regulation and permitting of PM_{2.5} and its precursors. We are also making non-substantive updates to the remainder of the Arkansas SIP. Our analysis today is not relevant to the Arkansas Minor NSR permitting program and the provisions on which we are reviewing and acting can operate separately from the Arkansas Minor NSR Program. Therefore, the EPA is taking no action on the substantive revisions to add provisions under the following new Sections: Reg. 19.414 – Operational Flexibility-Applicant's Duty to Apply for Alternative Scenarios; Reg. 19.415 – Changes Resulting in No Emissions Increases; Reg. 19.416 – Permit Flexibility; and Reg. 19.417 – Registration; and the non-substantive revisions to correct formatting, clarify the incorporation by reference dates, and clarify acronyms. We note that the revisions to the Arkansas Minor NSR Program at Regulation 19,

Chapter 4 submitted on July 26, 2010, will be addressed separately by the EPA in a later action.

- The EPA is taking no action at this time on the revisions to the Insignificant Activities List in Regulation 19, Appendix A that were submitted on July 26, 2010 and November 6, 2012. Regulation 19, Appendix A is part of the Arkansas Minor NSR program and will be addressed with the pending revisions to Regulation 19, Chapter 4.
- The EPA is taking no action at this time on the Fee Regulation provisions at Regulation 9, Chapter 5 submitted on November 6, 2012. The EPA will address the fee provisions in a separate action at a later time. The provisions on which we are reviewing and acting can operate independent of the fee provisions. Therefore, the EPA is taking no action on the substantive revisions to Regulation 9, Chapter 5 to replace the current Fee Regulation contained in the Arkansas SIP, which include substantive revisions to address fee requirements for carbon dioxide and methane, as well as, non-substantive revisions to correct formatting.
- The EPA is taking no action at this time on the November 6, 2012, substantive revisions to Regulation 19, Chapter 4 to address GHGs in the Arkansas Minor NSR program. These revisions will be addressed with the remainder of the pending revisions to the Arkansas Minor NSR program at a later date.
- The EPA is taking no action at this time on the November 6, 2012, substantive revisions to Regulation 26, Chapter 3 to address GHG permitting and the non-

substantive revisions to Regulation 26, Chapter 4 to correct formatting and clarify the incorporation by reference dates. Regulation 26 is the Arkansas Title V program.

- The EPA is taking no action at this time on the revisions to the Arkansas PSD Program to provide for GHG PSD PAL permitting adopted by the state on June 28, 2013, effective on July 27, 2013. These revisions were submitted to EPA on January 7, 2014. The submittal included revisions to the Arkansas Regulation 19, Chapter 9, sections 19.904(A)(1), 19.904(E)(3), and 19.904(G)(1). These revisions were solely to implement the GHG PSD PAL revisions. Since the Supreme Court of the United States rendered its decision on June 23, 2014, in *Utility Air Regulatory Group (UARG) v. EPA (No. 12-1146)*, the EPA does not find it appropriate to take action on provisions implementing permitting provisions for GHG PSD PALs at this time. The EPA will address this submittal from the state in a separate action at a later date.

The following table summarizes which regulatory provisions the EPA is taking action on in today's proposed approval.

Table 1: Summary of the individual Revisions to Each Section Evaluated				
Section	Title	Date Submitted to EPA	Adopted by State	Comments
Regulation 9, Chapter 5	Air Permit Fees	November 6, 2012	June 22, 2012 and October 26, 2012	No action at this time
Regulation 19, Chapter 1	Title, Intent, and Purpose	July 26, 2010	December 5, 2008	Evaluated in this action
		November 6, 2012	June 22, 2012 and October 26, 2012	Evaluated in this action
Regulation 19, Chapter 2	Definitions	July 26, 2010	December 5, 2008	Evaluated in this action
		November 6, 2012	June 22, 2012 and October 26, 2012	Evaluated in this action
		September 10, 2014 request for parallel	August 22, 2014	Evaluated in this action

Table 1: Summary of the individual Revisions to Each Section Evaluated				
Section	Title	Date Submitted to EPA	Adopted by State	Comments
		processing		
Regulation 19, Chapter 3	Protection of the National Ambient Air Quality Standards	July 26, 2010	December 5, 2008	Evaluated in this action
		September 10, 2014 request for parallel processing	August 22, 2014	Evaluated in this action
Regulation 19, Chapter 4	Minor Source Review	July 26, 2010	December 5, 2008	No action at this time
		November 6, 2012	June 22, 2012 and October 26, 2012	No action at this time
Regulation 19, Chapter 5	General Emissions Limitations Applicable to Equipment	July 26, 2010	December 5, 2008	Evaluated in this action
		September 10, 2014 request for parallel processing	August 22, 2014	Evaluated in this action
Regulation 19, Chapter 6	Upset and Emergency Conditions	July 26, 2010	December 5, 2008	Evaluated in this action
Regulation 19, Chapter 7	Sampling, Monitoring, and Reporting Requirements	July 26, 2010	December 5, 2008	Evaluated in this action
Regulation 19, Chapter 8	111(D) Designated Facilities	Not part of the Arkansas SIP.		
Regulation 19, Chapter 9	Prevention of Significant Deterioration	July 26, 2010	December 5, 2008	Approved by EPA on April 2, 2013, at 78 FR 19596
		November 6, 2012	June 22, 2012 and October 26, 2012	Approved by EPA on April 2, 2013, at 78 FR 19596.
		January 7, 2014	June 28, 2014	No action at this time
		September 10, 2014 request for parallel processing	August 22, 2014	Evaluated in this action
Regulation 19, Chapter 10	Regulations for the Control of Volatile Organic Compounds in Pulaski County	July 26, 2010	December 5, 2008	Evaluated in this action
Regulation 19, Chapter 11	Major Source Permitting Procedures	July 26, 2010	December 5, 2008	Evaluated in this action
Regulation 19, Chapter 13	Stage I Vapor Recovery	July 26, 2010	December 5, 2008	Evaluated in this action
Regulation 19, Chapter 14	CAIR NO _x Ozone Season Trading Program General Provisions	July 26, 2010	December 5, 2008	Approved by EPA on April 17, 2014, at 78 FR 21631.

Table 1: Summary of the individual Revisions to Each Section Evaluated				
Section	Title	Date Submitted to EPA	Adopted by State	Comments
Regulation 19, Chapter 15	Regional Haze	July 26, 2010	December 5, 2008	Approved by EPA on March 12, 2012, at 77 FR 14604.
Regulation 19, Appendix A	Insignificant Activities List	July 26, 2010	December 5, 2008	No action at this time
		November 6, 2012	June 22, 2012 and October 26, 2012	
Regulation 19, Appendix B	National Ambient Air Quality Standards List	September 10, 2014 request for parallel processing	August 22, 2014	Evaluated in this action
Regulation 26, Chapter 3	Requirements for a Permit, Applicability	November 6, 2012	June 22, 2012 and October 26, 2012	No action at this time
Regulation 26, Chapter 4	Applications for Permits	November 6, 2012	June 22, 2012 and October 26, 2012	No action at this time

We have evaluated the July 26, 2010, November 6, 2012, and September 10, 2014, SIP submissions for whether they meet the CAA and 40 CFR Part 51, and are consistent with the EPA's interpretation of the relevant provisions. Today's proposed action and the accompanying Technical Support Document (TSD) present our rationale for proposing approval of these regulations as meeting the minimum federal requirements for the adoption and implementation of the NAAQS and required PSD permitting elements. The EPA is parallel processing the revisions proposed on August 22, 2014, based on the request submitted on September 10, 2014. This means that the EPA is proposing approval at the same time that the ADEQ is completing the public comment and rulemaking process at the state level. The September 10, 2014, SIP revision request will not be complete and will not meet all the adequacy criteria until the state public process is complete and the SIP revision is submitted as a final adoption with a letter from the Governor or Governor's designee. The EPA is proposing to approve the SIP revision request after completion of the state public process and final submittal.

II. The EPA's Analysis of the State Submittals

A. *Revisions to the Arkansas PSD Program to Address PM_{2.5} Permitting*

The ADEQ adopted revisions to the Arkansas SIP and the Arkansas PSD Program on August 22, 2014. The ADEQ submitted these adopted revisions to the EPA for parallel processing on September 10, 2014. These ADEQ revisions address the regulatory requirements of the EPA's implementation rules for the 1997 and 2006 PM_{2.5} NAAQS as applicable to the State's general regulatory program and its PSD permitting program. Specifically, the EPA promulgated two rules establishing both required and optional implementation regulations for PM_{2.5}: the May 16, 2008 final rule for Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5}) (referred to as the NSR PM_{2.5} Implementation Rule), 73 FR 28321, and the October 20, 2010 final rule for Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC) (referred to as the PM_{2.5} PSD Increments – SILs – SMC Rule), 75 FR 64864. Today's proposed action and the accompanying Technical Support Document (TSD) present our rationale for proposing approval of this submission as part of the Arkansas PSD SIP by finding that the Arkansas PSD SIP includes the requirements to address these two rulemakings concerning the PM_{2.5} NAAQS.¹

1. The NSR PM_{2.5} Implementation Rule

a. How does the September 10, 2014, revision to the Arkansas PSD program address the

¹ There are no PM_{2.5} nonattainment areas in Arkansas; therefore ADEQ is not required to adopt or submit a NNSR program for PM_{2.5} implementation as part of the Arkansas SIP.

requirements of the NSR PM_{2.5} Implementation Rule?

The EPA's final NSR PM_{2.5} Implementation Rule required states to submit applicable SIP revisions to the EPA no later than May 16, 2011, to address this Rule's PSD and NNSR SIP requirements. Based on the analysis presented below and in our accompanying TSD, the EPA is proposing to find that the September 10, 2014, revision to the Arkansas PSD SIP includes all of the PSD requirements of the 2008 final NSR PM_{2.5} Implementation Rule for the following reasons:

- (1) Regulation of Direct PM_{2.5} and Precursors: The Arkansas SIP at Regulation 19, Chapter 3 and Appendix B gives the ADEQ the authority to implement the 2006 PM_{2.5} NAAQS for purposes of PSD. Further, the September 10, 2014, revisions to the definition of "Regulated NSR pollutant" at Regulation 19.903(B) identify that direct emissions of PM_{2.5} and its precursors, NO_x and SO₂, are regulated under the Arkansas PSD program.
 - (2) Establish SERs: The Arkansas PSD program at Regulation 19.904(A)(2) incorporates by reference the significant emission rates for direct PM_{2.5} emissions and precursors of PM_{2.5} as promulgated by EPA at 40 CFR 52.21(b)(23) on May 16, 2008.
 - (3) Condensable PM₁₀/PM_{2.5} Emissions: The Arkansas PSD program includes condensable emissions of PM₁₀ and PM_{2.5} for purposes of PSD permitting at Regulation 19.903(B)(6). The language submitted on September 10, 2014, is consistent with the federal requirements promulgated on May 16, 2008 at 40 CFR 51.166(b)(49)(vi) and corrected by EPA on October 25, 2012 at 40 CFR 51.166(b)(49)(i)(a).
- b. Litigation on the May 16, 2008 PM_{2.5} NSR Implementation Rule
- On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council v.*

EPA, 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded the EPA’s 2007 and 2008 rules implementing the 1997 PM_{2.5} NAAQS, including the NSR PM_{2.5} Implementation Rule. The court ordered the EPA to “repromulgate these rules pursuant to Subpart 4 consistent with this opinion.” *Id.* at 437. Subpart 4 of Part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 NSR PM_{2.5} Implementation Rule addressed by the court decision described above, promulgated NSR requirements for implementation of PM_{2.5} in both nonattainment areas (NNSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 rule that address requirements for PM_{2.5} in attainment and unclassifiable areas to be affected by the court’s opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 NSR PM_{2.5} Rule in order to comply with the court’s decision. Accordingly, the EPA’s proposed approval of Arkansas’s SIP revisions with respect to the PSD requirements promulgated by the 2008 NSR PM_{2.5} Rule does not conflict with the court’s opinion.

The Court’s decision with respect to the NNSR requirements promulgated by the 2008 NSR PM_{2.5} Rule also does not affect the EPA’s action on the present proposed approval, as this proposed approval does not address any of the PM_{2.5} nonattainment NSR requirements.

2. The PM_{2.5} PSD Increment – SILs – SMC Rule

- a. How does the September 10, 2014, revision to the Arkansas PSD program satisfy the Required Increment Component of the PM_{2.5} Increment – SILs – SMC Rule?

The EPA finalized the PM_{2.5} PSD Increment – SILs – SMC Rule to provide additional

regulatory requirements under the PSD SIP program regarding the implementation of the PM_{2.5} NAAQS. *See* 75 FR 64864. The PM_{2.5} PSD Increment – SILs – SMC Rule required states to submit SIP revisions to the EPA by July 20, 2012, adopting provisions equivalent to or at least as stringent as the PSD increments and associated implementing regulations. Specifically, the SIP rule requires a state's submitted PSD SIP revision to adopt and submit for EPA approval the PM_{2.5} increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS and associated implementing regulations. More detail on the PM_{2.5} PSD Increment – SILs – SMC Rule can be found in the EPA's October 20, 2010 final rule. *See* 75 FR 64864.

With respect to the required increment component of the PM_{2.5} Increment – SILs – SMC Rule, the ADEQ incorporated by reference the federal requirements for PM_{2.5} increment at 40 CFR 52.21(c) as promulgated by EPA on October 20, 2011. The ADEQ also incorporated by reference the required definitions to implement the PM_{2.5} increment promulgated by the EPA on October 20, 2011, such as baseline area at 40 CFR 52.21(b)(15)(i), major source baseline date at 40 CFR 52.21(b)(14)(i), minor source baseline date at 40 CFR 52.21(b)(14)(ii) and (iii), source impact analysis requirements at 40 CFR 52.21(k)(1) and requirements for sources impacting Federal Class I areas at 40 CFR 52.21(p). The EPA is proposing to find that the Arkansas PSD NSR SIP now includes the PM_{2.5} increments and associated implementing regulations, and these increments and implementing regulations are applicable requirements for sources and modifications that are major for PM_{2.5} and/or the identified precursors of SO₂ and NO_x.

- b. How does the September 10, 2014, revision to the Arkansas PSD program address the Optional SILs and SMC Components of the PM_{2.5} Increment – SILs – SMC Rule?

EPA's October 20, 2010, PM_{2.5} Increment – SILs – SMC Rule also provided that States could discretionarily choose to adopt and submit for EPA approval SILs used as a screening tool to evaluate the impact a proposed new major source or major modification may have on the NAAQS or PSD increment, and a SMC (also a screening tool) to determine the subsequent level of ambient air monitoring data gathering required for a PSD permit application for emissions of PM_{2.5}.

On January 22, 2013, the U.S. Court of Appeals granted a request from the EPA to vacate and remand to the EPA portions of the federal PSD regulations (40 CFR 51.166(k)(2) and 52.21(k)(2)) setting forth provisions for implementing SILs for PM_{2.5} so that the EPA could reconcile the inconsistency between the regulatory text and certain statements in the preamble to the 2010 final rule. *Sierra Club v. EPA*, 705 F.3d 458, 463-64 (D.C. Cir. 2013). The court declined to vacate the different portion of the federal PSD regulations (40 CFR 51.165(b)(2)) for implementing SILs for PM_{2.5} that did not contain the same inconsistency in the regulatory text. *Id.* at 465-66. The court further vacated the portions of the PSD regulations (40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c)) implementing a PM_{2.5} SMC, finding that the EPA lacked legal authority to adopt and use the PM_{2.5} SMC to exempt permit applicants from the statutory requirement to compile and submit ambient monitoring data. *Id.* at 468-69. On December 9, 2013, the EPA issued a good cause final rule formally removing the affected SILs and SMC provisions from the CFR. See 78 FR 73698.

The September 10, 2014 revision to the Arkansas PSD program does not include the optional PM_{2.5} SMC and SIL provisions. Unless explicitly identified in Regulation 19.904(A), the Arkansas PSD SIP only incorporates by reference the federal PSD requirements at 40 CFR

52.21(a)(2) through (bb) as in effect on November 29, 2005. Because Regulation 19.904(A) does not explicitly identify 40 CFR 52.21(k)(2) or 52.21(i)(5)(i)(c) as promulgated by the EPA on October 20, 2011 as being part of the Arkansas PSD program, the EPA proposes to find that the Arkansas PSD program does not include the PM_{2.5} SIL and SMC provisions that have been vacated by the Courts and removed by the EPA on December 9, 2013.

3. Interstate Transport of Air Pollution and PSD

CAA 110(a)(2)(D)(i)(I) calls for the SIP to prohibit emissions to other states which will (1) contribute significantly to nonattainment of the NAAQS or (2) interfere with maintenance of the NAAQS. CAA 110(a)(2)(D)(i)(II) calls for the SIP to prohibit emissions to other states which will (1) interfere with measures required to prevent significant deterioration or (2) interfere with measures to protect visibility. The December 17, 2007 SIP submittal addressed CAA 110(a)(2)(D)(i)(I) and (II) for the 1997 PM_{2.5} NAAQS. We previously acted on (1) the contribution to nonattainment and interference with maintenance portion (August 29, 2013, 78 FR 53269) and (2) the visibility protection portion (March 12, 2012, 77 FR 14604). We neglected to act on the portion pertaining to interstate transport of air pollution and PSD.

The CAA 110(a)(2)(D)(i)(II) interstate transport requirement for PSD is met when new major sources and major modifications in a state are subject to a comprehensive EPA-approved PSD permitting program that (1) applies to all regulated NSR pollutants and (2) satisfies the requirements of EPA's PSD implementation rules. This is because a fully approved PSD program necessarily needs to fully consider source impacts on other States. Because these criteria will be met with our approval of the Arkansas PSD SIP revision, we are proposing to approve the portion of the December 17, 2007 SIP submittal that addresses interstate transport of

air pollution and PSD for the 1997 PM_{2.5} NAAQS (CAA 110(a)(2)(D)(i)(II)).

B. Impacts on Existing Federal Implementation Plan Clocks

The EPA previously promulgated a partial approval and partial disapproval of the Arkansas infrastructure SIP for the 1997 ozone NAAQS and the 1997 and 2006 PM_{2.5} NAAQS on August 20, 2012 (77 FR 50033, August 20, 2012). The partial disapproval was based on the State's failure to submit the required PSD SIP revisions from the May 16, 2008 PM_{2.5} NSR Implementation Rule. The EPA's partial disapproval of required elements of the Act started a federal implementation plan (FIP) clock for the required 2008 NSR PM_{2.5} Implementation Rule revisions, which expired on September 19, 2014.

The EPA on May 22, 2014, made a separate finding of failure to submit for the State of Arkansas based on the State's failure to submit revisions to the SIP incorporating the required component of the October 20, 2010 PM_{2.5} PSD Increment – SILs – SMC Rule. See 79 FR 29354. The EPA's finding of failure to submit established a 24-month deadline by which time the EPA must promulgate a FIP for Arkansas to address the PM_{2.5} PSD requirements for increment and the associated implementing regulations, unless the State submits and the EPA approves a SIP revision that corrects the deficiency before the EPA promulgates a FIP for the State, in accordance with section 110(c)(1).

The EPA's proposed action today preliminarily finds that the September 10, 2014, submittal for parallel processing satisfies all required elements for PM_{2.5} PSD implementation as required through EPA's May 16, 2008, and October 20, 2010, final rules. Accordingly, finalization of today's proposal will stop the two FIP clocks on the lack of these elements in the

Arkansas PSD program and remove any FIP obligation from EPA for the PM_{2.5} PSD implementation.

C. General Updates to the Arkansas SIP

The July 26, 2010 and November 6, 2012 submittals, included numerous updates throughout the Arkansas SIP at Regulation 19 to update incorporation by reference dates, and correct grammar and formatting. The accompanying TSD provides a line-item analysis of each of these revisions. Our analysis demonstrates that these revisions are non-substantive in nature. Thus EPA is proposing approval.

The September 10, 2014 submittal contains new Appendix B to Regulation 19 that is intended to establish the specific NAAQS that are implemented through the Arkansas SIP and the Arkansas PSD program. Appendix B captures the ambient air quality standards promulgated in 40 CFR Part 50 as of July 27, 2012. Although Appendix B as submitted is approvable, this incorporation by reference date does not capture the 2012 particulate matter primary NAAQS revision (78 FR 3086). Under CAA 110(a)(1), the State is allowed 3 years from the date of promulgation of national ambient air quality primary standard to submit a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. Therefore, Arkansas is required to submit revisions to address the 2012 particulate matter primary NAAQS revision by December 14, 2015.

III. Proposed Action

The EPA proposes to approve the revisions to the Arkansas SIP submitted on July 26,

2010, November 6, 2012, and September 10, 2014, because we have made the preliminary determination that these SIP packages were adopted and submitted in accordance with the CAA and EPA regulations regarding implementation of the PM_{2.5} NAAQS. Therefore, under section 110 and part C of the Act and for the reasons stated above, the EPA proposes to approve the following revisions to the Arkansas SIP:

- Revisions to Regulation 19, Chapter 1 submitted on July 26, 2010 and November 6, 2012;
- Revisions to Regulation 19, Chapter 2 submitted on July 26, 2010, November 6, 2012, and September 10, 2014, with the exception of the GHG Biomass Deferral provision submitted as part of the definition of CO₂e on November 6, 2012;
- Revision to Regulation 19, Chapter 3 submitted on July 26, 2010 and September 10, 2014;
- Revisions to Regulation 19, Chapter 5 submitted on July 26, 2010 and September 10, 2014;
- Revisions to Regulation 19, Chapter 6 submitted on July 26, 2010;
- Revisions to Regulation 19, Chapter 7 submitted on July 26, 2010;
- Revisions to Regulation 19, Chapter 9 submitted on September 10, 2014;
- Revisions to Regulation 19, Chapter 10 submitted on July 26, 2010;
- Revisions to Regulation 19, Chapter 11 submitted on July 26, 2010;
- Revisions to Regulation 19, Chapter 13 submitted on July 26, 2010
- New Regulation 19, Appendix B submitted on September 10, 2014; and
- A portion of a December 17, 2007 SIP submittal addressing interstate transport of air

pollution and PSD for the 1997 PM_{2.5} NAAQS (CAA 110(a)(2)(D)(i)(II)).

The EPA is also proposing to find that the Arkansas PSD NSR SIP meets all the CAA PSD requirements for implementing the 1997 and 2006 PM_{2.5} NAAQS, including the PM_{2.5} PSD requirements contained in the federal regulations as of December 9, 2013, including regulation of NO_x and SO₂ as PM_{2.5} PSD precursors, regulation of condensables, and PM_{2.5} increments. As such, upon finalization of today's proposed rulemaking, the EPA will stop the two FIP clocks that are currently running on the Arkansas PSD program pertaining to PM_{2.5} PSD implementation.

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small

entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen Oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 29, 2014.

Samuel Coleman, P.E.,

Acting Regional Administrator.